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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,  
8 Plaintiff,

9 -vs-

10 FRANCISCO VIVANCO-GONZALEZ,  
11 Defendant.

NO. CR-06-2101-WFN-1

ORDER

12  
13 A second pretrial conference and motion hearing was held September 6, 2006. The  
14 Defendant, who is in custody, was present and represented by Kurt Rowland and assisted by  
15 Court-appointed interpreter Carlos Radillo; Assistant United States Attorney Jane Kirk  
16 represented the Government.

17 Pending before the Court was Defendant's Motion to Dismiss the Indictment. The  
18 Court has reviewed the file and pending motion and is fully informed. This Order is entered  
19 to memorialize and supplement the oral rulings of the Court. Accordingly,

20 **IT IS ORDERED** that:

21 1. Defendant's Motion to Dismiss the Indictment, filed August 9, 2006, **Ct. Rec. 27**,  
22 is **DENIED** for the reasons stated on the record.

23 2. Defendant's oral motion to continue trial is **GRANTED**.

24 The Court finds that the ends of justice served by the granting of a continuance of  
25 the trial in this matter outweigh the best interests of the public and the Defendant in a speedy  
26 trial. A trial date of September 18, 2006 would unreasonably deny defense counsel adequate

1 time to review the case and determine if the Defendant will qualify for the fast track program  
2 and provide effective assistance of counsel, taking into account the exercise of due diligence.

3 3. The trial date of September 18, 2006, is **STRICKEN and RESET to October 16,**  
4 **2006, at 1:00 p.m., in Yakima,** Washington.

5 4. All time from the trial date of September 18, 2006, to the new trial date of  
6 October 16, 2006, is **EXCLUDED** for speedy trial calculations pursuant to 18 U.S.C.  
7 § 3161(h)(8)(A). The Defendant has signed a waiver of his speedy trial rights.

8 5. The final pretrial conference of September 18, 2006, is **STRICKEN and RESET**  
9 **to October 16, 2006, at 11:00 a.m., in Yakima,** Washington.

10 6. Trial briefs, motions in limine, requested voir dire, witness and exhibit lists, and  
11 a set of proposed **JOINT JURY INSTRUCTIONS** shall be filed and served on or before  
12 **October 2, 2006.**

13 Jury instructions should only address issues that are unique to this case, and shall  
14 include instructions regarding the elements of each claim, any necessary definitions and a  
15 proposed verdict form.

16 The Joint Proposed Jury Instructions shall include:

17 (a) The instructions on which the parties agree; and

18 (b) Copies of instructions that are disputed (i.e., a copy of each party's proposed  
19 version of an instruction upon which they do not agree). All jury instructions from the most  
20 current edition of the Ninth Circuit Manual of Model Jury Instructions may be proposed by  
21 number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements  
22 of LR 51.1(c).

23 Each party shall address any objections they have to instructions proposed by any  
24 other party in a memorandum. The parties shall identify the specific portion of any proposed  
25 instruction to which they object and shall elaborate the basis for the objection. Objections  
26 asserting that an instruction sets forth an incorrect statement of law shall describe the legal

1 authority that supports this objection. Failure to file an objection and supporting argument  
2 may be construed as consent to the adoption of an instruction proposed by another party.

3 7. An additional pretrial conference and motion hearing shall be held **September 28,**  
4 **2006, at 3:00 p.m., in Yakima,** Washington.

5 8. All time from the filing of Defendant's Motion to Dismiss Case on August 9, 2006,  
6 to the date of the hearing on September 6, 2006 is **EXCLUDED** for speedy trial calculations  
7 pursuant to 18 U.S.C. § 3161(h)(1)(F).

8 The District Court Executive is directed to file this Order and provide copies to  
9 counsel.

10 **DATED** this 11th day of September, 2006.

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12  
13 09-07

s/ Wm. Fremming Nielsen  
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WM. FREMMING NIELSEN  
SENIOR UNITED STATES DISTRICT JUDGE